

BAKER & MILLER PLLC

ATTORNEYS and COUNSELLORS

2401 PENNSYLVANIA AVENUE, NW
WASHINGTON, DC 20037

TELEPHONE: (202) 663-7820
FACSIMILE: (202) 663-7849

William A. Mullins
wmullins@bakerandmiller.com

Direct Dial: (202) 663-7823

January 28, 2005

BY HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

ENTERED
Office of Proceedings

JAN 28 2005

Part of
Public Record

RE: Finance Docket No. 34337
*Michael H. Meyer, Trustee In Bankruptcy For California Western
Railroad, Inc. v. North Coast Railroad Authority*

Dear Secretary Williams:

North Coast Railroad Authority ("NCRA") hereby submits an original and eleven copies of North Coast Railroad Authority's Motion to Dismiss Complaint. As can be seen from the Certificate of Service, a copy of said filing has been served by courier on Complainant's counsel.

Please acknowledge the receipt and docketing of the enclosed filing by receipt stamping the eleventh copy thereof enclosed for that purpose and returning same to the person making this filing, for return to me. If there are any questions concerning this filing, please contact me.

Sincerely,



William A. Mullins

cc: Parties of Record

213121

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34337

**MICHAEL H. MEYER, TRUSTEE IN BANKRUPTCY FOR
CALIFORNIA WESTERN RAILROAD, INC.**

v.

NORTH COAST RAILROAD AUTHORITY

**NORTH COAST RAILROAD AUTHORITY'S
MOTION TO DISMISS COMPLAINT**

**ENTERED
Office of Proceedings
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Public Record**

**Christopher J. Neary
General Counsel
NORTH COAST RAILROAD AUTHORITY
110 South Main Street, Suite C
Willits, CA 95490
Tel.: (707) 459-5551
Fax: (707) 459-3018**

**William A. Mullins
David C. Reeves
Christine J. Sommer
BAKER & MILLER PLLC
2401 Pennsylvania Ave., N.W.
Suite 300
Washington, DC 20037
Tel.: (202) 663-7820
Fax: (202) 663-7849**

**Attorneys for North Coast Railroad
Authority**

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**NORTH COAST RAILROAD AUTHORITY'S
MOTION TO DISMISS COMPLAINT**

The North Coast Railroad Authority ("NCRA"), pursuant to 49 C.F.R. § 1111.5, hereby moves the Surface Transportation Board ("STB" or "Board") to dismiss the complaint filed in this docket by Michael H. Meyer ("Meyer"), Trustee in Bankruptcy for California Western Railroad, Inc. ("CWR").

SUMMARY

A complaint must allege sufficient facts and claims to create "reasonable grounds for investigation or action" by the Board. 49 U.S.C. § 11701. If a complaint fails to meet this standard, it must be dismissed. *See, e.g., Consolidated Rail Corporation – Abandonment Exemption – In Erie County, NY; Buffalo Crushed Stone, Inc. v. R.J. Corman Railroad / Allentown Lines, Inc. and R.J. Corman Cos.*, STB Docket No. AB-167 (Sub-No. 1164X), STB Docket No. 42028 (STB served Oct. 7, 1998) (dismissing complaint that failed to allege sufficient facts to support claims). The Board can dismiss complaints without a hearing where the issues are "essentially legal." *Trailer Bridge, Inc. v. Sea Star Lines, LLC*, STB Docket No. WCC-103, 1999 STB LEXIS 703 (served Dec. 10, 1999) at *2-*3. In considering a motion to

dismiss, factual allegations are construed in a light most favorable to the complainant. *See Sierra Pacific Power Co. and Idaho Power Co. v. Union Pacific Railroad*, STB Docket No. 42012, slip op. at 4 (STB served Jan. 26, 1998).

Meyer seeks to recover from NCRA, a state agency, damages for harm allegedly suffered by CWR between January 1999 and September 2002 because NCRA assertedly violated its statutory obligations under 49 U.S.C. Sections 10742 (mandatory interchange), 10744 (continuous carriage of freight) and 11101(a) (common carrier obligation) with respect to a line that NCRA owns, but does not operate. These allegations do not create “reasonable grounds” for investigation or action because:

- (i) sovereign immunity bars a complaint before the Board against NCRA, a California state agency;
- (ii) the statute of limitations has expired with respect to all or most of the claim;
- (iii) Federal Railroad Administration (“FRA”) orders barring operation of the line superseded any service obligation that may otherwise have existed;
- (iv) NCRA is not the proper party as it has not been the authorized operator of the line since February 2001; and
- (v) Meyer does not allege that CWR requested specific service, as required to trigger a common carrier service obligation under Section 11101.

Accordingly, Meyer’s complaint should be dismissed.

FACTUAL BACKGROUND¹

NCRA is a public agency created by the California legislature in 1989 under the North Coast Railroad Authority Act.² In a series of transactions approved by the Board in the 1990's,³ NCRA acquired a line of railroad known as the Northwestern Pacific Railroad (the "Line"). The Line runs through a series of small communities from just above San Francisco Bay to Eureka and Arcata, located along California's northern coast. See Exhibit 1 hereto, a map of the Line and surrounding areas.⁴

The rail line formerly owned by CWR⁵ intersects the Line at Willits, CA. The CWR line extends from Willits west to the Pacific Ocean, at Fort Bragg, CA, and in recent years had principally been used as a scenic tourist railroad. CWR acquired that line in 1996 from the previous owner, a subsidiary of Kyle Railways.⁶ CWR is the latest in a succession of companies operating the Willits to Fort Bragg line under the name California Western Railroad or a

¹ Inasmuch as there is no factual record in this case, NCRA provides this factual background to acquaint the Board with the history and unique challenges faced by NCRA with respect to ownership of the Northwestern Pacific Railroad.

² North Coast Railroad Authority Act, CAL. GOV. CODE § 93000, *et seq.* (2004).

³ *North Coast Railroad Authority – Acquisition and Operation Exemption – Eureka Southern Railroad*, STB Finance Docket No. 32052 (ICC served Apr. 23, 1992); *North Coast Railroad Authority--Purchase Exemption-- Southern Pacific Transportation Company*, Finance Docket No. 32788 (Mar. 20, 1996); *North Coast Railroad Authority--Lease and Operation Exemption-- California Northern Railroad Company*, STB Finance Docket No. 33115 (Sept. 27, 1996).

⁴ Generally, the portion of the Line north of Willits is referred to as the Eel River division of the Line, while the portion Willits and south is referred to as the Russian River division.

⁵ Meyer's sale of the Willits to Ft. Bragg line was approved by the Board in April 2004. See *Mendocino Railway--Acquisition Exemption--Assets of The California Western Railroad*, STB Finance Docket No. 34465, 2004 STB LEXIS 231 (served April 9, 2004).

⁶ *CWRR, Inc.--Acquisition and Operation Exemption--Mendocino Coast Railway, Inc., d/b/a California Western Railroad*, STB Finance Docket No. 33005, 1996 STB LEXIS 398 (served August 19, 1996).

substantially similar name.⁷ As indicated by the Complaint, the major freight shipper on the line was a Georgia-Pacific lumber mill in Ft. Bragg, which ceased lumber operations at that location in September 2002.⁸ CWR filed for bankruptcy protection two months later. *See* Complaint, ¶1.

Since November 27, 1998, the Line has been subject to an FRA emergency order prohibiting its operation absent NCRA restoring the Line to FRA Class I track conditions.⁹ Although NCRA is a public agency, it does not receive regular funding from the State,¹⁰ and has never had the funds necessary to bring the Line, or even just the Russian River division of the Line, up to FRA Class 1 standards.

In early 2001, NCRA leased the Line to Northwestern Pacific Railway Co., LLC (“NWPY”) to repair and to operate.¹¹ The exemption granted in that proceeding remains in

⁷ Historically the California Western Railroad line was often owned by the lumber companies, until a Georgia-Pacific subsidiary sold the line to Kyle Railways in 1987. *See Mendocino Coast Railway, Inc. -- Acquisition Exemption -- Assets Of California Western Railroad*, Finance Docket No. 31058, 1987 ICC LEXIS 17 at *1 n.2 (Dec. 17, 1987).

⁸ According to news reports, Georgia-Pacific’s Ft. Bragg facility lost an ever-increasing amount of business from 1991 onward due to tightening forestry regulations, depleted raw material resources and its customers seeking synthetic alternatives to redwood. After several temporary closings and failure to turn a profit for all but one year since 1995, GP permanently shut down the plant in 2002. *See* “Fort Bragg at a Crossroads: Town’s growing tourist trade may offset loss of timber industry,” Fort Bragg Focus, June 23, 2002 (*see* Exhibit 2).

⁹ Indeed, the Eel River division of the Line had been under FRA restriction against operation since 1990, before it was acquired by NCRA.

¹⁰ For example, when the bill creating NCRA passed the California legislature, companion legislation that would have funded the NCRA was vetoed by the governor. Similarly, \$41 million was appropriated by the legislature in 2001 to help NCRA restore the Line to service, but before the funds could be expended, they were frozen due to a state budget crisis. Thus, although over \$70 million in public funds has been put toward acquisition, preservation and attempts to restore service on the Line, funding has not been available put the Line back in Class 1 condition as required to lift the FRA out-of-service order. Because the FRA has plenary jurisdiction with regard to rail safety matters, the Board cannot enter an order finding that NCRA or any other operator was obligated to operate the Line in violation of the FRA order. *See infra*, Argument, Section III.

¹¹ *Northwestern Pacific Railway Co., LLC--Lease and Operation Exemption--North Coast Railroad Authority, Northwestern Pacific Railroad Authority and Golden Gate Bridge, Highway*

effect. NWPY has not sought authority or an exemption to discontinue operations. The FRA out-of-service order remains in effect as well.

ARGUMENT

I. SOVEREIGN IMMUNITY BARS MEYER'S COMPLAINT AGAINST NCRA

Sovereign immunity bars Meyer from haling NCRA before the Board for adjudication of the complaint. The Supreme Court has held that an administrative agency does not have jurisdiction over a private party's suit against a non-consenting state agency. *Federal Maritime Comm'n v. South Carolina State Ports Authority*, 535 U.S. 743 (2002) ("SCSPA"). In *SCSPA*, the Court affirmed dismissal of a cruise company's complaint before the Federal Maritime Commission that a South Carolina maritime agency violated federal law by refusing port access to the cruise company's ships. The Court determined that if the defendant was an arm of the state, and if the suit would undergo an adjudication process similar to that of a federal court, then government immunity barred the plaintiff's suit because federal agencies – like federal courts – were unable to hear claims against non-consenting state sovereigns.

In this case, NCRA clearly qualifies for state immunity. First, NCRA is an arm of the State of California.¹² "The NCRA is a public agency created by the California legislature." *North Coast Railroad Authority--Purchase Exemption-- Southern Pacific Transportation Company*, Finance Docket No. 32788, 1996 STB LEXIS 85 at *1 (Mar. 20, 1996). As such, sovereign immunity shields NCRA from Meyer's complaint before the Board. *SCSPA*, 535 U.S.

and Transportation District, STB Finance Docket No. 33998 (66 Fed. Reg. 9135-9136, Feb. 6, 2001). ["Under the agreement, NWPY will assume all of the rights, duties and obligations of NCRA, including those set out in NCRA's agreements with NWPRA and GGBHTD."]

¹² This position is supported by the attachments to Meyer's complaint. See Complaint, Exhibit 1, Emergency Order No. 21 ("The North Coast Railroad Authority, *a California public agency* formed pursuant to California Government Code Section 93000 *et seq.*...") (emphasis added).

at 751, fn.6 (accepting Court of Appeals finding that the state port authority was protected by South Carolina's sovereign immunity because it is an arm of the state). Second, Board administrative processes for an adversarial proceeding are similar to federal civil litigation - discovery in Board adjudications largely mirrors that in federal civil litigation¹³ and the role of the Board (at least with respect to a complaint seeking damages, such as exists here) is similar to that of an Article III judge. *See id.*, at 756-57. Therefore, as the Court held in *SCSPA*, the Board must dismiss Meyer's claim against NCRA because it violates the protections of the sovereign immunity of the State of California.

Because NCRA is a state agency, and because Meyer has requested a judgment similar to that available from federal court litigation (monetary and equitable relief), this action qualifies as an impermissible infringement upon the sovereignty of the State of California. Accordingly, the complaint must be dismissed.

II. THE STATUTE OF LIMITATIONS HAS EXPIRED AS TO MOST OR ALL OF THE DAMAGES CLAIMED

The statute of limitations for filing a complaint is two years from the time the claim accrues. 49 U.S.C. 11705(c). Meyer's complaint seeks damages for alleged lost revenue. Though not explicitly stated, Meyer's complaint appears to seek damages covering the period January 1999 through September 2002. Specifically, Meyer claims CWR lost \$1.35 million of revenue over an unspecified period. Complaint, ¶15. Meyer further alleges that the damages represent lost revenue of \$500.00 per car, 60 cars per month (*i.e.*, \$30,000 per month), for an undefined period ending September 2002, when the Georgia-Pacific Ft. Bragg lumber mill closed. *Id.* Applying simple math, the \$1.35 million in lost revenue represents 45 months of

¹³ *See* 49 C.F.R. §1114.1 (2003).

claims. If Meyer's complaint covers the 45 months ending September 2002, that means the first month covered by the complaint is January 1999.

If January 1999 is the date the "claim accrued," then Meyer had until January 2001 to file the complaint. Inasmuch as Meyer did not complete the filings necessary for his complaint until November 22, 2004, the statute of limitations has simply elapsed for those claims. Furthermore, even if one assumes that there was an alleged continuing violation up and until the date the Georgia-Pacific plant closed in September 2002, then Meyer had until September 2004 to file his complaint governing any claims accruing in September 2002. Although Meyer submitted the complaint to the Board on May 22, 2003, it was never docketed and no proceeding was initiated. In fact, the complaint was not considered as filed and docketed until December 1, 2004. Therefore, because the complaint was not formally docketed and filed until after September 2004, it should be dismissed as being filed more than two years after the last possible date that any portion of the claim could have accrued.

Even if the complaint can be considered as having been filed when the incomplete document was submitted to the Board on May 22, 2003 - and there is no legal authority for doing so - the statute of limitations by that time would have expired as to any claim arising prior to May 22, 2001. Thus, at most, this leaves the May 22, 2001 to September 30, 2002 period as the applicable "best case scenario" for determining NCRA's liability. Meyer has made no attempt to define CWR's alleged damages during this period, failing to make a prima facie showing that he has alleged damages during that time period.

Of course, the biggest obstacle with respect to the statute of limitations issue is the fact that NCRA is not the proper party in interest. NCRA transferred its common carrier obligation to NWPY in February 2001, and was thus no longer authorized to serve the Line on May 22,

2001, which is the furthest back that the statute of limitations allows the complaint to reach, even under the scenario most favorable to Meyer. As such, NCRA had no service or other operating obligations at any time within the two-year period preceding the submission of the incomplete complaint, and is not a proper defendant for Meyer's claims.¹⁴ Accordingly, NCRA submits that the statute of limitations bars Meyer's complaint against NCRA and the complaint should therefore be dismissed.

III. BECAUSE THE FRA HAD IN PLACE AN EMERGENCY ORDER BARRING OPERATION OVER THE LINE, THERE CAN BE NO STATUTORY VIOLATIONS DUE TO THE INABILITY TO OPERATE OVER THE LINE

Meyer seeks to recover from NCRA damages for harm allegedly suffered by CWR between January 1999 and September 2002 because NCRA allegedly violated its statutory obligations under 49 U.S.C. Sections 10742 (mandatory interchange), 10744 (continuous carriage of freight) and 11101(a) (common carrier obligation). All of these statutory obligations presume that NCRA had operating authority over the Line and could have physically operated over the Line, and that because NCRA did not operate over the Line, it was in violation of these various statutes. Of course, the simple truth of the matter is that NCRA could not have operated over the Line due to the existence of an FRA emergency order prohibiting railroad operations over the Line.

During the period for which damages are sought, the FRA had ordered that the Line was unfit for safe freight carriage and had shut down all rail operations. As such, FRA's actions moot Meyer's allegation that CWR was entitled to service over the Line and excuses NCRA from its common carrier obligation and its obligation to offer interchange and continuous

¹⁴ See generally *Associated Protective Express, Inc., et al. v. Navajo Express, Inc., William Martin, and Unnamed Employees*, No. MC-C-10927, 1984 MCC LEXIS 322 (Sept. 17, 1984) (dismissing claims against individual defendants against whom no allegations were directed).

carriage of freight. As such, the existence of the FRA order requires the dismissal of the complaint. Likewise, even if the complaint were considered on its merits, the complaint would fail because the facts discussed herein would justify a finding that the embargo of the Line was reasonable and valid under the Board's five-factor balancing test. That test considers the carrier's financial condition; the condition of the track and the cost of repairs; the carrier's intent; the line's traffic volume and revenues, and the length of service cessation in determining the reasonableness of an embargo. *See generally Decatur County Commissioners v. Central Railroad Company of Indiana*, STB Finance Docket No. 33386 (STB served Sept. 29, 2000), slip op. at 7, *aff'd sub nom. Decatur County Commissioners v. Surface Transportation Board*, 308 F.3d 710, 716 (7th Cir. 2002). All of these factors weigh in NCRA's favor and would require the complaint to be dismissed.

To hold that NCRA (or NWPY) is liable for various statutory violations for failure to operate over the Line when NCRA could not have done so without violating an order of another federal agency would put this agency's orders and authority above the FRA's, yet there is no precedent for doing so. As the Board itself has recognized many times, the FRA has authority over safety issues for railroad operations. 49 U.S.C. § 20101, *et seq.* (2003). Indeed, the Board has specifically held that FRA has plenary jurisdiction over rail safety matters. *Regulations On Safety Integration Plans Governing Railroad Consolidations, Mergers, And Acquisitions Of Control; And Procedures For Surface Transportation Board Consideration Of Safety Integration Plans In Cases Involving Railroad Consolidations, Mergers, And Acquisitions Of Control*, STB Ex Parte No. 574 (served March 8, 2002), slip op. at 10:

FRA has "primary jurisdiction, expertise and oversight responsibility in rail safety matters" under 49 U.S.C. 20101 *et seq.*, as delegated by the Secretary of Transportation to the Federal Railroad Administrator at 49 CFR 1.49, and has the authority "to issue

regulations to promote safety in every area of railroad operations and reduce railroad-related accidents and injuries" under 49 U.S.C. 20101 and 20102.

"[R]egulation of 'every area of railroad safety' is FRA's jurisdiction." *Id.* It is clear that the Board unequivocally recognizes FRA's plenary authority in rail safety matters. *See Granite State Concrete Co., Inc. and Milford-Bennington Railroad Company, Inc. v. Boston and Maine Corp.*, STB Docket No. 42083 (STB served Sept. 15, 2003) (holding that FRA has primary oversight powers in safety matters and refusing to issue an emergency order where safety concerns restricted service).

As the Complaint admits, Emergency Order No. 21 "effectively shut down" operations on the Line. Given this "shut down" order, it would have been impossible for NCRA to perform the statutory functions that it is being accused of violating. It would therefore be entirely inappropriate, and likely reversible error, for the Board to hold NCRA liable for refusing to perform operations over the Line when those operations themselves would have been illegal under the decision of the FRA. Furthermore, to hold that operation of the Line was required even though FRA deemed the Line "an imminent and unacceptable threat to public safety" that posed "particularly serious threats to safety," Emergency Order No. 21, 63 Fed. Reg., at 67978, would not only be bad law, but would represent bad policy as well. Indeed, as noted, NCRA – or any entity alleged to have operational responsibility for the Line¹⁵ – would have been sanctioned for operating over the Line before the FRA deems the Line fit for operations. *Id.*

Moreover, the current state of the Line would not justify overturning the FRA's order, even if that were within the Board's power. There is no simple, economically feasible way to

¹⁵ It should be noted that the FRA itself did not find that NCRA was the proper party with the operating obligation, but rather recognized Rail-Ways, Inc. as the operating entity and noted that Rail-Ways, Inc., would be subject to service of the FRA order. 63 Fed. Reg. 67976.

bring the Line into compliance with the FRA order absent a substantial infusion of rehabilitation funds, which has yet to become available despite NCRA's best efforts. NCRA is a state agency without independent finances to allocate toward what would be an overwhelmingly expensive project. The estimated cost to repair the Line is in the millions of dollars. Meanwhile, the largest (and only) repair appropriation from the State of California was \$60,000 over 5 years ago.¹⁶ In addition, there are environmental and wildlife hurdles to properly repairing the Line. Indeed, even the Federal Emergency Management Agency was required to conduct an extensive programmatic environmental assessment before it could disburse funds in late 2004 to repair damage to the Line.¹⁷ Until these barriers are removed, neither NCRA nor any other party would be able to operate over the Line within the FRA's requirements.

IV. NCRA OWES NO DUTIES TO CWR BECAUSE NCRA IS NOT AUTHORIZED TO OPERATE THE LINE

For over six years, other carriers – not NCRA – have been responsible for operations over the Line. On May 12, 1998, NCRA contracted with Rail-Ways, Inc. ("Railways"), to operate the Line. Railways began operations on the Line in early 1998, with FRA recognizing Railways in Emergency Order No. 21 as the carrier responsible for operations on the Line. *See* Exhibit A to CWR's Complaint, Federal Railroad Agency Emergency Order No. 21, 63 Fed. Reg. 67976 ("Emergency Order No. 21") ("Operations are currently being conducted under contract by Rail-Ways, Inc.").

¹⁶ A 2001 state appropriation of approximately \$41 million was rescinded due to the state's budget crisis before the funds could be used to repair the Line.

¹⁷ Available at <http://www.northcoastrailroad.org/Acrobat/Documents/Final%20Programmatic%20Environmental%20Assessment.pdf>.

More recently, on February 6, 2001, the Board issued notice exempting the purchase of Railway's operating rights by NWPY, and NWPY took over operations of the Line. *See Northwestern Pacific Railway Co., LLC – Lease and Operation Exemption – North Coast Railroad Authority, Northwestern Pacific Railroad Authority and Golden Gate Bridge, Highway and Transportation District*, STB Finance Docket No. 33998 (STB served February 6, 2001). Therefore, NWPY apparently would be the proper party against which a complaint could have been filed. However, NWPY was (apparently deliberately) not named as a respondent in this proceeding,¹⁸ and the statute of limitations applicable to submitting a complaint against NWPY has already expired. Moreover, NWPY, like NCRA, was barred from operating the Line by Emergency Order No. 21.

Today, NWPY remains the sole carrier authorized to operate over the Line. When a transferor carrier leases its operating rights to a transferee carrier, the Board has held that the leasing of those rights shifts the common carrier obligations for service to the transferee railroad. *Southern Pacific Transport Co. – Abandonment Exemption- In Fresno County, CA; San Joaquin Valley Railroad Co. – Abandonment Exemption – In Kings County, CA; San Joaquin Valley Railroad Co. – Abandonment Exemption – In Fresno County, CA*, ICC Docket No. AB-12 (Sub-No. 179X); ICC Docket No. AB-398 (Sub-No. 2X); ICC Docket No. AB-398 (Sub No. 3X), 1995 ICC LEXIS 96 (ICC served April 17, 1995) ("*Southern Pacific*"). In *Southern Pacific*, the Interstate Commerce Commission ("ICC") evaluated the transfer of operating rights from the SP to another carrier which had not acquired all of the line's assets. In evaluating the common carrier obligations regarding rail freight traffic, the ICC specifically recognized that where the transferor railroad leases substantially all of its rights to provide freight rail service over a line,

¹⁸ NWPY is a contractor of, not an affiliate of, NCRA.

then common carrier obligations are assumed by the transferee carrier. *Southern Pacific*, 1995 ICC LEXIS 96, *6-*8. See also *Maine DOT – Acquisition Exemption – Maine Central Railroad Co.*, 8 I.C.C.2d 835 (1991) (noting that transfer of non-operating rights – such as assets or a limited right of way – would not shift the common carrier obligation, but that common carrier duties lie with the entity with control over operations of the rail).¹⁹

V. NO COMMON CARRIER OBLIGATION IS DUE TO CWR UNDER 49 U.S.C. §11101(A)

Even if NCRA had a common carrier obligation under Section 11101(a) to another railroad, the complaint fails to allege that CWR made the specific request for service necessary to invoke that obligation. In cases where shippers have alleged a violation of Section 11101(a) for failure to supply service, the Board has specifically held that any analysis of the common carrier obligation is predicated upon a sufficiently detailed request for movement of a specific type and quantity of goods from the complaining shipper.²⁰ Therefore, any inquiry about a

¹⁹ While NCRA has an underlying common carrier obligation by virtue of its acquisition of the underlying rail and grant of STB operating authority, that underlying obligation does not take effect unless NWPY obtains discontinuance authority. Until that time, the proper party with the common carrier obligation is NWPY. See generally, *Sonoma-Marin Area Rail Transit District--Acquisition Exemption--Northwestern Pacific Railroad Authority*, STB Finance Docket No. 34400 (STB served Mar. 10, 2004)(noting that an acquiring railroad who takes a line subject to an operating easement held by another carrier holds merely a residual common carrier obligation until such time that status is changed by the Board); and *Hanson Natural Resources Company – Non-Common Carrier Status—Petition For A Declaratory Order*, ICC Finance Docket No. 32248 (ICC served Dec. 5, 1994)(explaining obligations of carriers with residual and non-residual common carrier obligations).

²⁰ *CSX Transportation, Inc. – Abandonment – Between Bloomington and Montezuma, In Parke County, IN*; *CSX Transportation, Inc. – Abandonment Exemption – In Parke and Vermillion Counties, IN*; *Montezuma Grain Company, LLP and Parke County Redevelopment Comm’n v. CSX Transportation, Inc.*, ICC Docket No. AB-55 (Sub No. 486); STB Docket No. AB-55 (Sub-No. 579X); STB Finance No. 34019 (STB served Sept. 13, 2002); *The Atchison, Topeka and Santa Fe Railway Co. – Abandonment Exemption – In Lyon County, KS*, STB Docket No. AB-52 (Sub-No. 71X), 1991 ICC LEXIS 134 (June 11, 1991) (“*Atchison*”). “This position reflects the statutory language of 49 U.S.C. § 11101(a), which states, ‘A common carrier providing


railroad's duty to provide service under its common carrier obligations can only arise *after* it has received details of a specific shipment. Meyer has failed to allege any such request by CWR.

PRAYER FOR RELIEF

Meyer's complaint essentially amounts to an effort to force a state agency to pay money to a bankruptcy trustee because the state agency does not have enough money. Such a notion is ridiculous, and the Board should not hold otherwise and should dismiss the claim. There are numerous reasons why the complaint should be dismissed. The complaint should be dismissed for its failure to state reasonable grounds for investigation and action, as required by 49 U.S.C. § 11701, because the Board lacks jurisdiction of the matter, because the statute of limitations has expired, and because NCRA is not the authorized carrier on the Line and could not, even if authorized, operate the Line due to massive repairs required to lift FRA's emergency out-of-service order. Therefore, NCRA requests that the Board dismiss the complaint and provide NCRA with such other and further relief as the Board deems proper.

Respectfully submitted,

Christopher J. Neary
General Counsel
NORTH COAST RAILROAD AUTHORITY
110 South Main Street, Suite C
Willits, CA 95490
Tel.: (707) 459-5551
Fax: (707) 459-3018


William A. Mullins
David C. Reeves
Christine J. Sommer
BAKER & MILLER, PLLC
2401 Pennsylvania Ave., N.W.
Suite 300
Washington, DC 20037
Tel: (202) 663-7820
Fax: (202) 663-7849


Attorneys for North Coast Railroad Authority

transportation or service . . . shall provide the transportation or service on reasonable request.”
Atchison, 1991 ICC LEXIS 134, *13.

CERTIFICATE OF SERVICE

I hereby certify that on January 28, 2005, I have caused the foregoing North Coast
Railroad Authority's Motion to Dismiss California Western Railroad's Complaint to be served
by hand delivery on:

Fritz R. Kahn
Fritz R. Kahn, P.C.
1920 N Street, NW (8th fl.)
Washington, DC 20036-1601


William A. Mullins
Attorney for North Coast Railroad Authority

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 34337

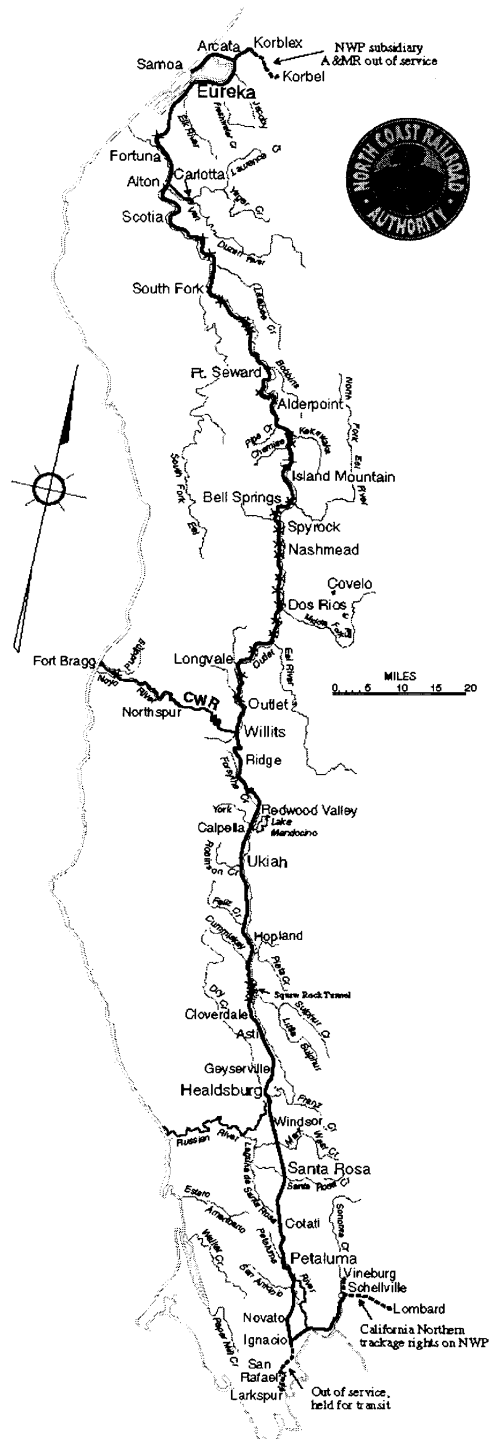
**MICHAEL H. MEYER TRUSTEE IN BANKRUPTCY FOR
CALIFORNIA WESTERN RAILROAD, INC.**

v.

NORTH COAST RAILROAD AUTHORITY

**NORTH COAST RAILROAD AUTHORITY'S
MOTION TO DISMISS COMPLAINT**

Exhibit 1



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Exhibit 2

Fort Bragg Focus

town, surrounds & direction

www.GoFortBragg.com *Forum for Local Talk--submit today*

***Summer

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Fort Bragg at a crossroads

Town's growing tourist trade may offset loss of timber industry

June 23, 2002

By BOB NORBERG
THE PRESS DEMOCRAT

FORT BRAGG

The closing of the Georgia-Pacific mill will mean the loss of 125 well-paying jobs and the city's working-class image, but hopes are high it will be offset by the Mendocino Coast's growing stature as a tourist destination.

"Tourism has to pick up the slack because that is all that is left," said Roger Fenderson, controller at Rossi's Building Supplies in this coastal town. "You don't have lumber, you don't have fishing. Without tourism, this would be a ghost town real quick."

Once employing 2,200 workers in around-the-clock shifts cutting lumber and fabricating plywood, the company now has only 125 workers out of Fort Bragg's 3,100. After losing money for six of the past seven years, GP said June 7 it would permanently close the mill.

In contrast, the Mendocino County tourism industry including Fort Bragg employs some 7,000 workers.

"Tourism has really grown. We have become a destination, and that impacts our economy a great deal," said Bruce Graves, a longtime Fort Bragg resident and owner of the Napa Auto Parts store.

The challenge now for Fort Bragg will be to generate the same economic vitality from the new tourism economy as it once did from the mill.

"Tourism jobs don't pay like industrial jobs. The mill, mill workers and mill workers' families spend money everywhere," Graves said.

And there is the impact on the city's self-identity: Any illusion that blue-collar Fort Bragg is now anything but a tourist town has vanished, but it doesn't want to become another tony coastal town with two-night-minimums and upscale tourists.

"This is just more of a real town," said Barbara Olsen, a 19-year resident and clerk at the Mendocino Vintage Emporium. "The town of Mendocino is so high-end. It's beautiful, but it's not like a real town, it's like a set."

The historic GP mill was founded on the bluff in 1881 as the Union Lumber Co., taking up 460 acres that is essentially the city of Fort Bragg's entire coastline.

In 1885 it built the Skunk Train, now owned by the California Western, inland along the Noyo River to bring logs to the mill for cutting and shipping on flat-bottomed schooners. It was later extended to Willits to join the nationwide rail network.

Union Pacific was sold in the mid-1960s to Louisiana-Pacific and in 1973 to Georgia-Pacific, when its production and employment were at their peak.

In the past seven years, however, the high cost of logs, increased logging regulations and a lack of demand has caused the mill to lose \$30 million, said general manager Ron Holen.

Holen, who has been at the mill for five years, said GP made every effort to keep the mill open, spending \$6 million in 1998 to modernize the plant.

At that time there were 330 employees and a payroll of \$11 million, Holen said.

"The mill is closing because it has not made a profit but for one year in the last seven," Holen said. "The cost of raw materials is so high that by the time you pay for the logs and for production, there is not enough profit left."

Holen said layoffs will probably begin in late August, when the last of the logs are shipped in for milling. Production will probably end in November and the mill will be closed by January.

The company's 125 workers receive \$6.4 million in wages and \$805,000 in health care benefits. If the loss of those wages is not a blow to the overall local economy, it will at least make a dent.

"What will be missed is the payroll," said Carla Howell, executive director of the Mendocino Coast Chamber of Commerce. "They were making a good living and had benefits, many of the things that are not offered in small businesses."

The jobs paid two to three times the wages generated by the tourist industry, which provides 20 percent of all jobs countywide.

Mill jobs pay an average wage of \$36,760, compared to \$13,240 a year for hotels and lodging services, and \$11,000 for restaurants, which also don't offer benefits, according to the state Economic Development Department.

Still, even as lumber and fishing decline, the Mendocino Coast has become much more alluring to visitors -- 130,000 contacted the county visitors bureau last year alone -- and it has created a whole new industry.

According to the U.S. Census, there were 3,500 jobs related to the tourist industry, with a payroll of \$40 million in Mendocino County in 2000.

The county's bed tax levied on hotels, motels and bed-and-breakfast inns, 90 percent of which are located on the coast, also shows the increase in tourism. The county collected \$2.5 million in 1995, \$3.2 million in 1998 and \$3.8 million last year.

According to a study on travel impacts for the state Technology, Trade and Commerce Agency, tourists last year spent \$325.7 million in Mendocino County.

Fort Bragg merchants say only half of their business is from tourists and the rest is from local residents, so they aren't sure exactly what to expect with the mill closure and the loss of those local wages.

"Anything like this in a community this size will have an impact," said Tom Honer, owner of the Harvest Market. "You lose jobs for families. I have seen people moving away and they take their families. It ripples through the whole community."

Georgia-Pacific also spent \$700,000 a year with local businesses such as Rossi's Building Supplies, Napa Auto Parts, Acme Auto Parts, Harvest Market and Motion Industries.

Those purchases will be missed, even if only a little bit.

"We don't like to lose anything, but it will not have a huge impact," said Fenderson at Rossi's Building Supply. "They have the employees who also shop here. Any time a large business closes, it is not just the business that they do, but also the families they support can't spend money on things."

Georgia-Pacific is a major contributor to the business of Motion Industries of Ukiah, which supplies industrial machine parts.

"We are diversified enough, but you cannot just go out and pick up a quarter-of-a-million-dollar or a half-million-dollar account overnight," said manager David Johnson. "It will put us in a bind."

Georgia-Pacific is also one of the largest taxpayers in Mendocino County. It pays \$360,000 a year in county taxes for its Fort Bragg mill property.

Of that, \$18,900 goes to the city of Fort Bragg, \$54,000 to a city improvement district, \$54,000 to

the fire district and \$72,000 to the hospital district.

City Manager Connie Jackson said the tax revenue the city receives is not significant. Even so, its loss may be enough to delay any new sewer and road projects within the downtown redevelopment district.

"This was a surprise for everybody, although the mill was closed a lot," Jackson said. "We are in a pretty early stage of understanding what the impact will be."

You can reach Staff Writer Bob Norberg at 521-5206 or bnorberg@pressdemocrat.com.